

# **APPENDIX C:**

## **MITIGATION CAPABILITIES ASSESSMENT**

## Appendix C: Mitigation Capabilities Assessment

### INTRODUCTION

This portion of the Plan assesses Hyde County's current capacity to mitigate the effects of the natural hazards identified in Appendix A. The assessment includes a comprehensive examination of the following local government capabilities:

1. *Staff & Organizational Capability*
2. *Technical Capability*
3. *Policy & Program Capability*
4. *Fiscal Capability*
5. *Legal Authority*
6. *Political Willpower*

The purpose of conducting this capabilities assessment is to identify potential hazard mitigation opportunities available to Hyde County through its operation as a local government. Careful analysis should detect any existing gaps, shortfalls or weaknesses within existing government activities that could exacerbate community vulnerability. The assessment will also highlight the positive measures already in place or being done at the County level, which should continue to be supported and enhanced if possible through future mitigation efforts.

The capabilities assessment serves as the foundation for designing an effective hazard mitigation strategy. It not only helps establish the goals and objectives for Hyde County to pursue under this Plan, but ensures that those goals and objectives are realistically achievable under given local conditions.

The Hazard Mitigation Planning Committee met annually to review the hazard mitigation plan and made the following recommendations outlined in the mitigation action plan. Planning, Emergency Services, and Inspections were the lead departments and implemented the recommended mitigation strategies/actions into the following planning mechanisms:

- Flood damage prevention ordinance was reviewed for compliance with state guidelines as recommended by action #12
- FEMA Hazard Mitigation Grant Program (elevation and acquisition of residential structures in the special flood hazard area)
- Building and Inspections Department incorporated mitigation action #15 (wind resistant design into new construction in the planning area)
- Planning Department implemented mitigation action #3 (Flood control dyke to alleviate future flood hazard conditions)



### 1. STAFF & ORGANIZATIONAL CAPABILITY

Hyde County has **limited** staff and organizational capability to implement hazard mitigation strategies.

Hyde County is governed by a five-member **Board of Commissioners** who bear the responsibility of serving the people and improving the quality of life in the county. The county is divided into five townships (Currituck, Fairfield, Lake Landing, Ocracoke, and Swan Quarter) with one commissioner elected from each township. Terms on the board are staggered with elections held every two years. A **County Manager**, hired by the commissioners, acts on their behalf and manages County finances and services. More specifically, the County Manager directs and supervises the administration of all county offices, boards, commissions and agencies under the general direction and control of the Board.

The County has a number of professional staff departments to serve the residents of Hyde County and to carry out day-to-day administrative activities. These include the following:

<i><b>Board of Education</b></i>	<i><b>Finance Office</b></i>	<i><b>Register of Deeds</b></i>
<i><b>Building Inspections</b></i>	<i><b>Health Department</b></i>	<i><b>Sheriff's Department</b></i>
<i><b>Clerk of Court</b></i>	<i><b>Housing &amp; Mitigation</b></i>	<i><b>Social Services</b></i>
<i><b>Cooperative Extension</b></i>	<i><b>Maintenance Department</b></i>	<i><b>Tax Department</b></i>
<i><b>Emergency Management</b></i>	<i><b>Planning Department</b></i>	<i><b>Water Department</b></i>

The **Board of Education** is responsible for the operation of the county school system and is also elected at large by the people. County funds usually maintain the buildings and provide funds for other capital projects, with state funds paying salaries, purchasing textbooks and supplies.

The **Building Inspections Department** enforces the State Building Code, the National Flood Insurance Program, the Community Rating System, and other applicable local codes through a program of inspection and permitting.

The **Clerk of Court**, the **Register of Deeds** and the **Sheriff** are elected every four years. The Clerk of Court is custodian of the court system in Hyde County and that office is financed completely by the State of North Carolina. The Register of Deeds and the Sheriff operate on a budget approved annually by the commissioners.

The Hyde County **Cooperative Extension** office seeks to help individuals, families, and communities put research-based knowledge to work to improve their lives. North Carolina's Cooperative Extension is based at North Carolina's two land grant institutions, NC State University and NC A&T State University, but offices are located in all 100 counties and on the Cherokee Indian Reservation.



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The **Emergency Management** office is responsible for the mitigation, preparedness, response and recovery operations that deal with both natural and man-made disaster events. The formation of an emergency management office in each county is mandated under North Carolina General Statutes (Ch. 166A – North Carolina Emergency Management Act).

The **Finance Office** is responsible for the oversight and management of the County's budget and fiscal programs, including the administration of state and federal grants.

The **Health Department** and **Social Services** have separate boards that are appointed by the commissioners. Hiring of employees in these departments is approved by the commissioners with state personnel policies applying.

The **Housing and Mitigation Department** is tasked with overseeing the County's housing programs and with implementing disaster recovery and mitigation strategies.

The **Planning Department** maintains a full time planner that is responsible for addressing land use planning and economic development concerns.

Of the above-listed County departments, the following have been assigned specifically delegated responsibilities to carry out mitigation activities or hazard control tasks: **Emergency Management, Planning Department, Building Inspections, Housing & Mitigation** and the **Water Department**. Each of these departments have been involved in the development of this mitigation plan in order to identify gaps, weaknesses or opportunities for enhancement with existing mitigation programs.

For the most part, it was determined that each of these departments are adequately staffed, trained and funded to accomplish their missions. However, staff identified the need for an Information Technology Manager to enhance the County's computer-based technology. This need is further described in Section 2 of this appendix under "technical capability."



### **2. TECHNICAL CAPABILITY**

Hyde County has **very limited** technical capability to implement hazard mitigation strategies.

#### ***Technical Expertise***

Hyde County does have a full-time planner, emergency manager / building inspector, and housing specialist on staff to administer the County's hazard mitigation programs. The County does not have a licensed engineer or related technical expert on staff, and has in the past relied upon outside contractors/consultants to perform a majority of any required technical work.

Hyde County does not have a department or person responsible for Information Technology (IT), but it has been identified as a necessary addition to enhance local government operations and the County's ability to develop and maintain a state-of-the-art hazard mitigation program.

#### ***Geographic Information Systems (GIS)***

GIS systems can best be described as a set of tools (hardware, software and people) used to collect, manage, analyze and display spatially-referenced data. Many local governments are now incorporating GIS systems into their existing planning and management operations. Hyde County is currently developing a GIS system. It will serve as a needed enhancement for the Planning Department, Building Inspections office, Emergency Management, local law enforcement, and Emergency Medical Services to further hazard mitigation goals.

#### ***Internet Access***

Hyde County does provide its employees and citizens with high speed broadband Internet courtesy of the Rural Internet Access Authority established under the North Carolina Department of Commerce. Internet access opens up an enormous door for local officials to keep abreast of the latest information relative to their work and makes receiving government services more affordable and convenient. According to the North Carolina Rural Economic Development Center, information technology also offers increased economic opportunities, higher living standards, more individual choices, and wider and more meaningful participation in government and public life. Simply put, information technology can make distance – a major factor for Hyde County officials and residents - far less important than it used to be.

It is believed that Internet access will help further the County's hazard mitigation awareness programs, but should be supplemented with more traditional (and less technical) means as well.



### **3. FISCAL CAPABILITY**

Hyde County has **very limited** fiscal capability to implement hazard mitigation strategies. For Fiscal Year 2006-2007, Hyde County ranked 96<sup>th</sup> out of 100 in terms of budgeted expenditures (\$10,200,158.00). The majority of these funds are obligated to human services and education, although "public safety" did cost the county \$2,314,475.00 for this period according to the most recent financial statements. Hyde County receives most of its revenues through Ad Valorem taxes and through restricted intergovernmental contributions (federal and state pass through dollars).

It is highly unlikely that Hyde County could afford to provide the local match for the existing hazard mitigation grant programs if the State of North Carolina did not do so itself. Considering the current budget deficits at both the State and local government level, in North Carolina, combined with the apparent increased reliance on local accountability by the Federal government, this is a significant and growing concern for Hyde County.

Under the Disaster Mitigation Act of 2000, FEMA has made special accommodations for "small and impoverished communities", who will be eligible for a 90% Federal share, 10% non-Federal cost split for projects funded through the Pre-Disaster Mitigation Grant Program. Unfortunately, according to the current Interim Final Rule for Section 322 of the Act, Hyde County will not qualify as a small and impoverished community. The definition is restricted to "communities of 3,000 or fewer individuals that is identified by the State as a rural community."

The North Carolina Department of Commerce classifies counties into one of five tiers, with Tier 1 representing the most economically disadvantaged and Tier 5 the most prosperous. Tiers 1, 2 and 3 are considered "distressed" based on various economic and demographic characteristics. Hyde County is currently classified as a Tier 1 county, which makes it easier for the County access to a special utilities fund, priority status for Community Development Block Grant funds for economic development, and a waiver of local matching fund requirements for CDBG funds and Industrial Development Fund loans and grants.



### 4. POLICY AND PROGRAM CAPABILITY

This part of the capabilities assessment includes the identification and evaluation of existing plans, policies, practices, programs, or activities that either increase or decrease the community's vulnerability to natural hazards. Positive activities, which decrease hazard vulnerability, should be sustained and enhanced if possible. Negative activities, which increase hazard vulnerability, should become targeted for reconsideration and be thoroughly addressed within Mitigation Strategy for Hyde County.

#### ***Recent Hazard Mitigation Efforts***

Hyde County has undertaken a few specific hazard mitigation efforts in the past. Activities include the construction (incomplete) of a dike to protect the areas of Swan Quarter which are vulnerable to the effects of storm surges and flooding, and the County has also promoted the removal of trees along US 264 from Rose Bay west to eliminate potential road blocks resulting from fallen trees during a storm event. Only recently, however, has major progress been made through the availability of both state and federal mitigation and/or housing grant programs. These recent mitigation efforts are summarized as follows:

- Hurricane Isabel Elevation Program – Elevation of 25 flood-prone homes to at least 1-foot above the determined base flood elevation for each site. Expected completion by September of 2008.\*
- Hurricane Isabel Acquisition Program – Acquisition and demolition of 4 flood-prone structures. Completed December 2007.\*
- Hurricane Isabel CDBG-SA - Replaced 4 flood-prone structures of income eligible applicants. Rehabilitated 5 flood-prone structures of income eligible applicants. Assisted in the relocation from one acquired and demolished flood-prone structure from an income eligible applicant. Completed in June 2008.\*
- Hurricane Bonnie Elevation Program – Elevation of 29 flood-prone homes to at least 1-foot above the determined base flood elevation for each site. Completed in 2002.
- Hurricane Bonnie Acquisition Program – Acquisition and demolition of 3 flood-prone structures. Completed in 2002.
- Hurricane Floyd Acquisition Program – Acquisition and demolition of 5 flood-prone structures. Completed in 2002.
- Crisis Housing Assistance Program – Replacing 81 flood-damaged structures with modular homes elevated at least one foot above the determined base flood elevation for each site. Anticipated completion in 2003.
- CDBG Scattered Sites Program – Replacing 5 flood-prone structures with modular homes elevated at least one foot above the determined base flood elevation for each site. Anticipated completion in 2003.

*\*Information provided by Holland Consultants*



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### ***Community Rating System Activities***

Communities that regulate development in floodplains are able participate in the National Flood Insurance Program (NFIP). In return, the NFIP makes federally-backed flood insurance policies available for properties in the community. The Community Rating System (CRS) was implemented in 1990 as a program for recognizing and encouraging community floodplain management activities that exceed the minimum NFIP standards. There are ten CRS classes: class 1 requires the most credit points and gives the largest premium reduction; class 10 receives no premium reduction.

Hyde County participates in the Community Rating System as a "Class 9" community. This allows County residents to receive a 5% discount on their flood insurance premiums for policies purchased under the NFIP.

In 2001, A total of 568 credit points were verified by Insurance Services Office, Inc. (ISO) which results in a recommendation to the Federal Insurance Administrator that Hyde County be classified as a CRS Class 9. The following is a summary of ISO's findings with the total credit points for each activity noted in parenthesis:

**Activity 310 - Elevation Certificates:** Elevation Certificates are maintained by the Hyde County Inspections Department and copies made available upon request. (56 points)

**Activity 320 - Map Information:** Credit is provided for furnishing inquirers with information from the community's latest Flood Insurance Rate Map (FIRM), publicizing the service annually and maintaining records. (140 points)

**Activity 330 - Outreach Projects:** Credit is provided for placing the "Flood Tips" pamphlet in various public areas. (12 points).

**Activity 350 - Flood Protection Library:** Documents relating to floodplain management are available in the reference section of the Mattamuskeett School/Public Library. (18 points)

**Activity 420 - Open Space Preservation:** Credit is provided for maintaining at least 5 acres in the Special Flood Hazard Area (SFHA) as open space and in a natural condition. (49 points)

**Activity 430 - Higher Regulator Standards:** Credit is provided for a state-mandated floodplain regulation and for a Building Codes Effectiveness Grading Schedule (BCEGS) Classification of 5/5. (25 points)

**Activity 440 - Flood Data Maintenance:** Credit is provided for an elevation reference mark maintenance policy and program of inspection and for maintaining copies of all FIRM maps. (80 points)

**Activity 450 - Stormwater Management:** Credit is provided for a regulation for soil and erosion control. (32 points)



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**Activity 510 - Floodplain Management Planning:** Based on the updates made to the NFIP Report of Repetitive Losses as of 1-31-01, Hyde County has 52 repetitive loss properties and is a Category C community for CRS purposes. All requirements for the 2001 cycle have been met. **An adopted Floodplain Management Plan (per current CRS criteria) is required to be submitted on or before October 1, 2002.** (No current credit points)

**Activity 520 – Acquisition and Relocation:** Credit is provided for acquiring and relocating buildings from the community's flood hazard area. (15 points)

**Activity 530 – Retrofitting:** Credit is provided for buildings in the Special Flood Hazard Area (SFHA) that have been elevated to protect them from flood damage. (28 points)

**Activity 540 - Drainage System Maintenance:** Credit is provided for a routine inspection (minimum of once per year) of components of the drainage system and performing maintenance as needed and for keeping records of part of the inspections and maintenance. Additional credit is given for a state regulation prohibiting the blockage of the drainage system. (55 points)

**Activity 630 – Dam Safety:** All North Carolina communities currently receive CRS credit for the state's dam safety program. (58 points)

### ***Emergency Operations Plan***

Hyde County has developed and adopted an Emergency Operations Plan which predetermines actions to be taken by government agencies and private organizations in response to an emergency or disaster event. The Plan was adopted in March 1993 and revised in December 2000. For the most part, the Plan describes the County's capabilities to respond to emergencies and establishes the responsibilities and procedures for responding effectively to the actual occurrence of a disaster.

The Plan does not specifically address hazard mitigation, but it does identify the specific operations to be undertaken by the County (both Mainland Hyde County and a control group on Ocracoke) to protect lives and property immediately before, during and immediately following an emergency. There are no foreseeable conflicts between this Hazard Mitigation Plan and Hyde County's Emergency Management Plan, primarily because they are each focused on two separate phases of emergency management (mitigation vs. preparedness and response). The Plan does identify the County Manager, the County Finance Officer and the County Planner as having lead roles in the long-term reconstruction phase following a disaster – which presents a unique window of opportunity for implementing hazard mitigation strategies. However, none are specified within the Emergency Operations Plan.

### ***CAMA Land Use Plan***

Hyde County has developed and adopted a Land Use Plan as required by the Coastal Area Management Act (CAMA). Passed by the General Assembly in 1974, CAMA was



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designed with the goal of balancing environmental protection with economic development in North Carolina's 20 coastal counties. Land-use planning guidelines under CAMA give local leaders an opportunity and responsibility to establish and enforce policies to guide the development of their community. Besides laying out a vision for local growth, land-use plans play a key role in coastal development patterns. Neither the state nor the local government can issue a CAMA permit for a building project in an area of environmental concern if the project is inconsistent with the local land-use plan.

Hyde County's CAMA Land Use Plan was originally completed in 1986. The document was updated in 1992, then again in 1997. The Plan has been reviewed for purposes of this Hazard Mitigation Plan, with special attention paid to those portions which address natural hazards. According to the Plan, there are no significant man-made hazards in Hyde County.

Hyde County's general vision statements under the CAMA Land Use Plan includes the following four main themes:

- *Hyde County desires to preserve the rural appearance of the County.*
- *Hyde County envisions the protection of the natural environment through the provision of the public water and sewer infrastructure.*
- *Hyde County desires to create more job opportunities to entice County young people to stay and live in the County or return to the County to work after attending college or university or serving in the military.*
- *Hyde County envisions a greater focus on developing its tourism industry.*

After completing a thorough review of the Hyde County CAMA Land Use Plan, it was determined that there are no pending hazard mitigation strategies for the County to implement, and, considering this current mitigation planning effort, there are no foreseeable conflicts with the goals previously established under the CAMA Plan. There is, however, a significant opportunity to enhance hazard mitigation objectives for Hyde County within this Hazard Mitigation Plan – objectives that go beyond any content within the CAMA Plan.

In summary, the CAMA Land Use Plan provides some general information with regard to natural hazards and post-disaster recovery procedures but does not specifically recommend hazard mitigation strategies for Hyde County to implement. It rather serves to underscore and reiterate the following main points under what has been classified as either "resource protection" or "storm hazard mitigation":

- *Hyde County generally supports – but reserves the right to object amendments and/or changes thereto – the guidelines of CAMA and the efforts and programs of the Division of Coastal Management and the Coastal Resources Commission to protect the ocean, coastal wetlands, estuarine waters, estuarine shorelines, and public trust areas of Hyde County.*



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- *Hyde County supports enforcement of the N.C. State Building Code, particularly requirements of construction standards to meet wind resistive factors, i.e., "design wind velocity." The County will also support provisions in the State Building Code requiring tiedowns for mobile homes, which help resist wind damage.*
- *Hyde County supports the National Flood Insurance Program*
- *Hyde County supports the use of best management practices recommendations of the United States Soil Conservation Service.*

**NOTE:** The N.C. Coastal Resources Commission (CRC) recently adopted revisions to the land-use planning guidelines [15A NCAC 7B]. The new guidelines are designed to be less complicated, better tailored to local governments' needs and more in line with the goals of CAMA. The CRC has sought to improve the quality of land-use plans by establishing simple, clear elements, requiring more thorough analysis of land suitability and creating management topics to guide the development of local policies. The revisions are scheduled to take effect in August 2002, following review by the state Rules Review Commission and the General Assembly. It is expected that Hyde County will then once again develop an update to their CAMA Land Use Plan.

### ***Floodplain Management Plan***

Hyde County does not currently have a separate floodplain management plan for purposes of the National Flood Insurance Program's Community Rating System (CRS). However, this Hazard Mitigation Plan is intended to fulfill the CRS planning requirement when it becomes adopted, and will be maintained as such.

### ***Stormwater Management Plan***

Hyde County does not currently have an adopted stormwater management plan, but does apply stormwater management provisions through their subdivision regulations. According to the Hyde County Subdivision Ordinance, lands subject to flooding, irregular drainage conditions, excessive erosion and other reasons unsuitable for residential use shall not be platted for residential use unless the hazards can be and are corrected. For major subdivisions, a stormwater drainage plan must be prepared and necessary stormwater drainage improvements must be completed before final plat approval.

Stormwater drainage for Ocracoke Island was also addressed in the 1997 update to the Hyde County CAMA Land Use Plan. According to the Plan, "every time an impervious surface is constructed, the island loses some of its capacity to retain stormwater runoff. Increasing amounts of fresh water are being dumped into sensitive estuarine salt waters." The Plan recommends the development of a comprehensive stormwater management plan for Ocracoke and implemented with a stormwater management ordinance.

Also worth noting here, the Village of Fairfield has established its own formal drainage district and has qualified in the past for Public Assistance following disaster events. Flood control measures such as pumps and flood gates have been utilized within Fairfield, but the district does not maintain its own stormwater management plan.



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### ***County Ordinances***

Hyde County has adopted several ordinances that are relevant to hazard mitigation. The following worksheet provides an inventory of these ordinances, along with specific information to be considered when developing this Plan's Mitigation Strategy. For each ordinance, the **purpose** is identified, a condensed **description** is provided, and a quantification of its "**mitigation effectiveness**" is listed (i.e. high, moderate or low). Additional information regarding each ordinance's mitigation effectiveness is provided under a **notes** column. This worksheet will continue to be revisited by Hyde County when considering how to strengthen its existing mitigation program through local ordinances.



## INVENTORY OF LOCAL ORDINANCES RELEVANT TO HAZARD MITIGATION

TITLE & ADOPTION DATE	PURPOSE	DESCRIPTION	MITIGATION EFFECTIVENESS	NOTES
<b>Flood Damage Prevention Ordinance (12/20/93)</b>	To minimize public and private losses due to flood conditions in specific areas.	Requires a development permit be submitted to the County prior to any construction or substantial improvement activities. Permits will only be approved if they meet the provisions of the ordinance, which include development standards that will minimize the potential for flood losses. Standards are established for construction materials, equipment, methods, practices and uses. Most importantly, establishes the requirements for elevation and floodproofing (non-residential) to base flood elevation. Special standards exist for Coastal High-Hazard Areas (CHHAs).	<b>HIGH</b>	Requires the minimum standards of the National Flood Insurance Program (NFIP). The County's floodplain areas are currently being re-studied as part of the State's Floodplain Mapping Program. It is possible that floodplain areas will be redelineated with updated topography, and that base flood elevations will be recalculated.
<b>Subdivision Ordinance (3/6/2000)</b>	To regulate all divisions of land for purposes of sale or building development (immediate or future), including all divisions of land involving the dedication of new streets/roads or a change in existing streets/roads.	All proposed subdivisions must go through an approval process involving multiple individuals/agencies. Subdivision plats are required for review and must include the location of areas subject to flooding. Lands subject to flooding, irregular drainage conditions, excessive erosion and other reasons unsuitable for residential use shall not be platted for residential use unless the hazards can be and are corrected. For major subdivisions, a stormwater drainage plan must be prepared and necessary stormwater drainage improvements must be completed before final plat approval. Plats are also reviewed by the local CAMA Permit Officer to determine if the property lies within a designated Area of Environmental Concern (AEC), and what permits are required. Furthermore, all waterfront development must meet CAMA setback requirements and impervious surface requirements. Plats are also reviewed by the Natural Resource Conservation Service (or its successor) to identify matters of topography and drainage. Subdivisions of more than 100 lots are required to incorporate open space design concepts in consultation with the County.	<b>MODERATE</b>	Although not designed specifically for hazard mitigation purposes, this ordinance will prevent flood losses in tandem with the Flood Damage Prevention Ordinance. It will also minimize the adverse effects that development can have on stormwater drainage through impervious surface requirements and through sedimentation and erosion control. Through its roadway requirements, the ordinance also provides for adequate ingress and egress to subdivisions by emergency vehicles for fires or severe weather events. However, subdivisions are not often proposed in Hyde County, and only one major subdivision has been completed in the last 10 years (and none since the adoption of this ordinance).
<b>Ocracoke Development Ordinance (4/20/98)</b>	To regulate population density, the size of yards and open spaces, the height, size and location of buildings and other structures; to provide for an adequate transportation system; and to provide for adequate drainage, water supply, and	The ordinance requires development permits before any building or structure is constructed or any land is used except when in complete conformity with the ordinance. The permit application process requires a review of the plot plan and other information by the Development Ordinance Officer (Building Inspector), and allows for public input. The ordinance manages the density of new construction by requiring minimum lot sizes and minimum setback requirements from property lines, public rights of way and all bodies of water. In an effort to control stormwater runoff, the ordinance prevents any developed lot from being more than 50% covered by structures or any impervious surface.	<b>MODERATE</b>	This ordinance establishes minor development standards but does not regulate land use or provide zoning. It does not regulate any areas outside of the Village of Ocracoke.
<b>Manufactured Housing and Travel Trailer Park Ordinance (3/6/2000)</b>	To regulate the placement of mobile homes, and to regulate the construction or expansion of mobile home and travel trailer parks, through a registration and permitting process.	The permitting process requires that each proposed activity is in compliance with the County Land Use Plan and the Flood Damage Prevention Ordinance. For all proposed manufactured/mobile home parks, the process requires a review of site plans by the County Planner which includes design standards for surface water drainage. Additionally, the County Building Inspector is required to review buildings to be constructed in the park for compliance with the building code for the county. Mobile homes are required to be anchored and tied down as required by the Manufacturers Specifications of the North Carolina Department of Insurance. The ordinance also requires the control of brush and heavy undergrowth in manufactured/mobile home parks (limiting potential fuels for wildfires).	<b>MODERATE</b>	This ordinance does not regulate the placement of modular homes, which are considered by Hyde County to be the same as a site built home.
<b>Hyde County State of Emergency Ordinance (10/2/2000)</b>	To authorize the proclamation of a State of Emergency and the imposition of prohibitions and restrictions during a State of Emergency.	Establishes the authority and procedures for the Chairman of the Board of Commissioners to proclaim a State of Emergency, and to impose the following restrictions as described in the ordinance: curfew; evacuation; possession/transportation/transfer of intoxicating liquors, dangerous weapons or substances; access to areas; movements of people in public places; operation of businesses and other places; and other activities or conditions the control of which may be reasonably necessary to maintain order and protect lives or property during the State of Emergency.	<b>LOW</b>	The ordinance does not incorporate any long-term mitigation actions, such as temporary moratoria on the reconstruction of structures damaged or destroyed by a disaster event.



### **5. LEGAL AUTHORITY**

Local governments in North Carolina have a wide range of tools available to them for implementing mitigation programs, policies and actions. A hazard mitigation program can utilize any or all of the four broad types of government powers granted by the State of North Carolina, which are (a) Regulation; (b) Acquisition; (c) Taxation; and (d) Spending.

The scope of this local authority is subject to constraints, however, as all of North Carolina's political subdivisions must not act without proper delegation from the State. Under a principle known as "Dillon's Rule," all power is vested in the State and can only be exercised by local governments to the extent it is delegated. Thus, this portion of the capabilities assessment will summarize North Carolina's enabling legislation which grants the four types of government powers listed above within the context of available hazard mitigation tools and techniques.

#### **A. Regulation**

##### **GENERAL POLICE POWER**

North Carolina's local governments have been granted broad regulatory powers in their jurisdictions. North Carolina General Statutes (N.C.G.S.) bestow the general police power on local governments, allowing them to enact and enforce ordinances which define, prohibit, regulate or abate acts, omissions, or conditions detrimental to the health, safety, and welfare of the people, and to define and abate nuisances (including public health nuisances).

Since hazard mitigation can be included under the police power (as protection of public health, safety and welfare), towns, cities and counties may include requirements for hazard mitigation in local ordinances. Local governments may also use their ordinance-making power to abate "nuisances," which could include, by local definition, any activity or condition making people or property more vulnerable to any hazard (N.C.G.S. Ch. 160A Art. 8 (Delegation and Exercise of the General Police Power to Cities and Towns); Ch 153A, Art. 6 (Delegation and Exercise of the General Police Power to Counties)).

*Hyde County has enacted and enforces regulatory ordinances designed to promote the public health, safety and general welfare of its citizenry. These ordinances are listed and further discussed in Section 3 of this Appendix.*

##### **BUILDING CODES AND BUILDING INSPECTION**

Many structural mitigation measures involve constructing and retrofitting homes, businesses and other structures according to standards designed to make the buildings more resilient to the impacts of natural hazards. Many of these standards are imposed through the building code.



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North Carolina has a state mandatory building code, which applies throughout the state (N.C.G.S. 143-138(c)). However, municipalities and counties may adopt codes for their respective areas if approved by the state as providing “adequate minimum standards” (N.C.G.S. 143-138(e)). Local regulations cannot be less restrictive than the state code. Exempted from the state code are: public utility facilities other than buildings; liquefied petroleum gas and liquid fertilizer installations; and farm buildings outside municipal jurisdictions. No state permit may be required for structures under \$20,000. (Note that exemptions apply only to state, not local, permits).

Local governments in North Carolina are also empowered to carry out building inspections. N.C.G.S. Ch. 160A, Art. 19, Part 5; and Ch. 153A Art. 18, Part 4 empower cities and counties to create an inspection department, and enumerates its duties and responsibilities, which include enforcing state and local laws relating to the construction of buildings, installation of plumbing, electrical, heating systems, etc.; building maintenance; and other matters.

*Hyde County has adopted the state building code, and has established a Building Inspections Department to carry out its building inspections.*

### **LAND USE**

Regulatory powers granted by the state to local governments are the most basic manner in which a local government can control the use of land within its jurisdiction. Through various land use regulatory powers, a local government can control the amount, timing, density, quality, and location of new development. All these characteristics of growth can determine the level of vulnerability of the community in the event of a natural hazard. Land use regulatory powers include the power to engage in planning, enact and enforce zoning ordinances, floodplain ordinances, and subdivision controls.

Each local community possesses great power to prevent unsuitable development in hazard-prone areas. See N.C.G.S. Ch. 160A, Art. 8. (*Delegation and Exercise of the General Police Powers to Cities and Towns*); Art. 19 (*Planning*); Part 3 (*Zoning*); and Ch. 153A, Art. 6 (*Delegation and Exercise of the General Police Power to Counties*); Art. 18 (*Planning and Regulation of Development*); Part 2 (*Subdivision Regulation*); and Part 3 (*Zoning*).

### **Planning**

In order to exercise the regulatory powers conferred by the General Statutes, local governments in North Carolina are required to create or designate a planning agency (N.C.G.S. 160A-387). The planning agency may perform a number of duties, including: make studies of the area; determine objectives; prepare and adopt plans for achieving those objectives; develop and recommend policies, ordinances, and administrative means to implement plans;



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and perform other related duties (N.C.G.S. 160A-361). The importance of the planning powers of local governments is emphasized in N.C.G.S. 160A-383, which requires that zoning regulations be made in accordance with a comprehensive plan. While the ordinance itself may provide evidence that zoning is being conducted “in accordance with a plan”, the existence of a separate planning document ensures that the government is developing regulations and ordinances that are consistent with the overall goals of the community.

*Hyde County has established a planning agency made up of one County Planner. The county does not currently have a comprehensive plan, but has adopted a Coastal Area Management Act (CAMA) Land Use Plan which is further discussed in Section 3 of this Appendix.*

### **Zoning**

Zoning is the traditional and most common tool available to local governments to control the use of land. Broad enabling authority for municipalities in North Carolina to engage in zoning is granted in N.C.G.S. 160A-381; and for counties in N.C.G.S. 153A-340 (counties may also regulate inside municipal jurisdiction at the request of a municipality (N.C.G.S. 160A-360(d))). The statutory purpose for the grant of power is to promote health, safety, morals, or the general welfare of the community. Land “uses” controlled by zoning include the type of use (e.g., residential, commercial, industrial) as well as minimum specifications for use such as lot size, building height and set backs, density of population, etc.

Local governments are authorized to divide their territorial jurisdiction into districts, and to regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures, or land within those districts (N.C.G.S. 160A-382). Districts may include general use districts, overlay districts, and special use districts or conditional use districts. Zoning ordinances consist of maps and written text.

*Hyde County does not enforce a countywide zoning ordinance, but has adopted and enforces the Ocracoke Development Ordinance for the village of Ocracoke, which is further discussed in Section 3 of this Appendix.*

### **Subdivision Regulations**

Subdivision regulations control the division of land into parcels for the purpose of building development or sale. Flood-related subdivision controls typically require that subdividers install adequate drainage facilities and design water and sewer systems to minimize flood damage and contamination. They prohibit the subdivision of land subject to flooding unless flood hazards are overcome through filling or other measures, and they prohibit filling of floodway areas. Subdivision regulations require that subdivision plans be approved prior to the



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division/sale of land. Subdivision regulations are a more limited tool than zoning and only indirectly affect the type of use made of land or minimum specifications for structures.

Broad subdivision control enabling authority for municipalities is granted in N.C.G.S. 160-371, and in 153-330 for counties outside of municipalities and municipal extraterritorial planning jurisdictions (ETJs). Subdivision is defined as all divisions of a tract or parcel of land into two or more lots and all divisions involving a new street (N.C.G.S. 160A-376). The definition of subdivision does not include the division of land into parcels greater than 10 acres where no street right-of-way dedication is involved (N.C.G.S. 160A-376(2)).

*Hyde County has adopted a Subdivision Ordinance, which is further discussed in Section 3 of this Appendix.*

### **Floodplain Regulation**

In the Summer of 2000, the North Carolina General Assembly adopted Senate Bill 1341, entitled "An Act to Prevent Inappropriate Development in the One Hundred-Year Floodplain and to Reduce Flood Hazards." This act was proposed through the North Carolina Department of Environment and Natural Resources in the wake of Hurricane Floyd and the catastrophic flooding that followed.

Under the Act, the North Carolina General Statutes regulating development within floodways were rewritten to include floodplain regulation (N.C.G.S. 143-214.51-214.61). The purpose of the new law is to (1) minimize the extent of floods by preventing obstructions that inhibit water flow and increase flood height and damage; (2) prevent and minimize loss of life, injuries, property damage and other losses in flood hazard areas; and (3) promote the public health, safety and welfare of citizens of North Carolina in flood hazard areas.

The new statute affects local governments by directing, not mandating, that local government entities: (1) designate a one hundred-year floodplain; (2) adopt local ordinances to regulate uses in flood hazard areas; (3) enforce those ordinances, and (4) grant permits for use in flood hazard areas that are consistent with the ordinance. The act also makes certain that local ordinances meet the minimum requirements of participation in the National Flood Insurance Program (NFIP).

The incentive for local governments adopting such ordinances is that they will afford their residents the ability to purchase flood insurance through the NFIP. In addition, communities with such ordinances in place will be given priority in the consideration of applications for loans and grants from the Clean Water Revolving Loan and Grant Fund. Additional points may be awarded for actions taken toward the implementation of a comprehensive land-use plan, such as the adoption of a zoning ordinance or any other measure that significantly



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contributes to the implementation of the comprehensive land-use plan and the flood hazard prevention ordinance.

The statute establishes minimum standards for local ordinances and provides for variances for prohibited uses as follows:

- (a) A flood hazard prevention ordinance adopted by a county or city pursuant to this Part shall, at a minimum:
  - (1) Meet the requirements for participation in the National Flood Insurance Program and of this section.
  - (2) Prohibit new solid waste disposal facilities, hazardous waste management facilities, salvage yards, and chemical storage facilities in the 100-year floodplain except as authorized under subsection (b) of this section.
  - (3) Provide that a structure or tank for chemical or fuel storage incidental to a use that is allowed under this section or to the operation of a water treatment plant or wastewater treatment facility may be located in a 100-year floodplain only if the structure or tank is either elevated above base flood elevation or designed to be watertight with walls substantially impermeable to the passage of water and with structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy.
- (b) A flood hazard prevention ordinance may include a procedure for granting variances for uses prohibited under N.C.G.S. 143-215.54(c). A county or city shall notify the Secretary [of Crime Control and Public Safety] of its intention to grant a variance at least 30 days prior to granting the variance. A county or city may grant a variance upon finding that all of the following apply:
  - (1) The use serves a critical need in the community.
  - (2) No feasible location exists for the location of the use outside the 100-year floodplain.
  - (3) The lowest floor of any structure is elevated above the base flood elevation or is designed to be watertight with walls substantially impermeable to the passage of water and with structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy.
  - (4) The use complies with all other applicable laws and regulations.

*Hyde County is in good standing with the National Flood Insurance Program. The County has adopted and enforces a Flood Damage Prevention Ordinance which is further discussed in Section 3 of this Appendix.*



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### **B. Acquisition**

The power of acquisition can be a useful tool for pursuing local mitigation goals. Local governments may find the most effective method for completely “hazard-proofing” a particular piece of property or area is to acquire the property (either in fee or a lesser interest, such as an easement), thus removing the property from the private market and eliminating or reducing the possibility of inappropriate development occurring. North Carolina legislation empowers cities, towns, counties to acquire property for public purpose by gift, grant, devise, bequest, exchange, purchase, lease or eminent domain (N.C.G.S. Ch 153A. Art. 8; Ch. 1600A. Art. 11).

*Hyde County has used acquisition as a local mitigation tool. In the past 3 years, eight (8) flood prone structures have been acquired through the federal Hazard Mitigation Grant Program (HMGP). Another 81 structures are currently being acquired and replaced (elevated above base flood elevation) through the state’s Crisis Housing Assistance Fund (CHAF). Another five (6) structures are being replaced and elevated under the County’s Community Development Block (CDBG) Scattered Sites program. Although structural elevation is the preferred mitigation technique due to the lack of available land outside of identified floodplain areas, property acquisition will continue to be considered as a legitimate alternative for future endeavors.*

### **C. Elevation of Residential Structures**

Hyde County participated in the Hazard Mitigation Program HMGP for the elevation/compliance of 26 units around the county. In Swan Quarter 11 units were assisted, 4 units in Scranton, and 11 in Engelhard. HMGP 1448-0086 funds were used to elevate/retrofit these 26 units. Note that all units may not have been elevated but were brought into compliance with the floodplain requirements as determined by a licensed surveyor. This includes the installation of floodgates, retrofit of mechanical equipment above base flood and achieving positive drainage.

### **C. Taxation**

The power to levy taxes and special assessments is an important tool delegated to local governments by North Carolina law. The power of taxation extends beyond merely the collection of revenue, and can have a profound impact on the pattern of development in the community. Communities have the power to set preferential tax rates for areas which are more suitable for development in order to discourage development in otherwise hazardous areas.

Local units of government also have the authority to levy special assessments on property owners for all or part of the costs of acquiring, constructing, reconstructing, extending or otherwise building or improving beach erosion control or flood and hurricane protection works within a designated area (N.C.G.S. §160A-238). This can serve to increase the cost of building in such areas, thereby discouraging development.



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Because the usual methods of apportionment seem mechanical and arbitrary, and because the tax burden on a particular piece of property is often quite large, the major constraint in using special assessments is political. Special assessments seem to offer little in terms of control over land use in developing areas. They can, however, be used to finance the provision of necessary services within municipal or county boundaries. In addition, they are useful in distributing to the new property owners the costs of the infrastructure required by new development.

*Hyde County does levy property taxes, but does not use any preferential tax districts or special assessments for purposes of guiding growth and development.*

### **D. Spending**

The fourth major power that has been delegated from the North Carolina General Assembly to local governments is the power to make expenditures in the public interest. Hazard mitigation principles can be made a routine part of all spending decisions made by the local government, including the adoption annual budgets and a Capital Improvement Plan (CIP).

A CIP is a schedule for the provision of municipal or county services over a specified period of time. Capital programming, by itself, can be used as a growth management technique, with a view to hazard mitigation. By tentatively committing itself to a timetable for the provision of capital to extend services, a community can control growth to some extent especially in areas where the provision of on-site sewage disposal and water supply are unusually expensive.

In addition to formulating a timetable for the provision of services, a local community can regulate the extension of and access to services. A CIP that is coordinated with extension and access policies can provide a significant degree of control over the location and timing of growth. These tools can also influence the cost of growth. If the CIP is effective in directing growth away from environmentally sensitive or high hazard areas, for example, it can reduce environmental costs.



### **6. POLITICAL WILLPOWER**

Most Hyde County residents are quite knowledgeable about the potential hazards that their community faces, and in recent years, they have become more familiar with the practices and principles of mitigation. Many flood prone structures have become elevated and to a lesser extent, acquired and relocated or replaced out of harm's way. It is strongly believed that such tangible and visual changes within the community have created a greater sense of awareness among local residents, and that hazard mitigation is a concept that they are beginning to readily accept and support.

Because of this fact, coupled with Hyde County's history with natural disasters, it is expected that the current and future political climates are favorable for supporting and advancing future hazard mitigation strategies.